IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 471 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

K SRINIVAS NAGABHUSHANRAO

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 471 of 2000

MR YATIN SONI for Petitioner No. 1

MR DESAI, APP, for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/10/2002

ORAL JUDGEMENT

1. The appellant herein came to be convicted by learned Additional Sessions Judge, Surat, at Vyara, for offences punishable under Sections 306 and 498-A of Indian Penal Code by virtue of a judgment and order dated

the 19th April, 2000, passed in Sessions Case No.226 of 1998. He is ordered to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.2000/-, in default, to undergo simple imprisonemnt for six months for offence punishable under Section 306, I.P.C. For offence punishable under Secton 498-A, he is ordered to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/-.

2. As per the prosecution case, the accused is serving with Kakrapar Atomic Power Project Plant in Surat district. Her had married Sreemayee, who happened to be his colleague. They were staying at the Anumala Township Colony in Room No.B-62/2. As per the prosecution case, the appellant used to ill-treat his wife-Sreemayee and cause her physical and mental torture. Sreemayee had conceived and went to her parental house for delivery. She returned to Kakrapar on the 9th February, 1998. On the 22nd March, 1998, it is alleged that the appellant scolded his wife-Sreemayee for a mistake in cooking and, therefore, at about 12.30 P.M., Sreemayee committed suicide by jumping from the second floor of the said block No.62 of Anumala Township Colony. She was immediately taken to the hospital for treatment by the appellant. Considering her condition, she was referred to hospital at Bardoli, where she was declared dead. The parents of the deceased were informed. They arrived and, ultimately, father of the deceased lodged a written complaint before the police. An offence was registered and investigation made. Having found sufficient evidence against the appellant, a charge sheet was filed in the Magisterial Court. The learned Magistrate committed the case to the Court of Sessions, as the offences were triable exclusively by a Court of Sessions and Sessions Case No.226 of 1998 came to be registered.

3. Charge was framed against accused at Ex.3 for offences punishable under Sections 498-A and 306 of Indian Penal Code. The accused pleaded not guilty to the charge and expressed his desire to face the trial. The prosecution led the evidence. Considering the evidence led by the prosecution, the learned Additional Sessions Judge came to a conclusion that the prosecution was successful in establishing the charges against the accused and, therefore, recorded a conviction and imposed the sentence on the accused-appellant, as stated above.

3.1 Aggrieved by the said judgment and order, the present appeal is preferred.

4. Learned Advocate, Mr. Soni, for the appellant

submitted that, in form of oral evidence, there is evidence of the father and the mother of the deceased. Barring these two witnesses, there is no witness to support the prosecution case. Mr. Soni submitted that the depositions of these two witnesses are far from being reliable. Both of them have improved their versions, so as to suit the requirement of prosecution case and to secure a conviction and this is evident from their cross-examination when they admit that, earlier, they have not stated anything about any physical or mental cruelty caused by the appellant to the deceased. Mr. Soni, therefore, submitted that there is total lack of oral evidence to establish the charges. Mr. Soni submitted that the learned Trial Judge has also accepted this aspect, but the learned Trial Judge founded the conviction on documents-Ex.15 and 16, which are in the form of notes, purported to have been written by the deceased. The notes were brought by the complainant when he came to Kakrapar after learning about the death of the deceased. The notes do not carry any signature nor do they carry any date. Mr. Soni submitted that handwritings of these notes were not certified to be that of the deceased by any expert. It was only the accused, who applied for the same and, ultimately, the notes were sent for examination to a handwriting expert. Mr. Soni submitted that, if the report of the handwriting expert is seen, he has compared the admitted writings of the deceased only with Ex.15 and has certified that the admitted writings of the letter and the writings of Ex.15 are of the same person. The expert has not examined nor has he opined about the handwriting of Ex.16 and, therefore, Mr. Soni submitted that the same cannot be looked into by a Court. Mr. Soni submitted that the Court, therefore, will have only one documentary evidence, which is neither dated and nor signed. This would bcome important for the reason that, as per the evidence on record, the deceased was suffering from psychological depression and she was under treatment therefor at Hyderabad while she was at her parental house for delivery. The possibility of her having written Ex.15 while on depression at Hyderabad cannot be ruled out, as it does not bear a date and it has been brought by the father only when he came to Kakrapar, after learning about the incident. There is no evidence whatsoever to indicate as to when the note was written. Mr. Soni, therefore, submitted that the possibility of the deceased having written this note under a bout of depression cannot be ruled out. Relying on Ex.15, Mr. Soni submitted that the deceased has written therein that neighbours have learnt about ill-treatment meted out to her and have stopped talking to her, whereas no witness

is examined and, as per the evidence of the Investigating Officer, excepting the parents of the deceased and two other witnesses from Hyderabad, i.e., the son and the son-in-law of the complainant, no other person has supported the prosecution case. Mr. Soni, therefore, submitted that the neighbours having known about the ill-treatment meted out to her and having stopped talking to her could be only an imaginative feeling of the deceased as an outcome of depression. The doctor who was treating her has opined that about 15% of the patients develop a suicidal tendency in such type of disorder. Mr. Soni, therefore, submitted that the possibility of the deceased having committed suicide in absence of any reason cannot be ruled out. Mr. Soni submitted that there is no evidence whatsoever to indicate whether the fall of the deceased was suicidal, accidental or homicidal. All these factors, considered collectively, may be construed available for recording an acquittal. He, therefore submitted that this appeal may be allowed.

5. Learned Additional Public Prosecutor, Mr. Desai, submitted that, here is a case where dispute is between spouses and it would not be proper to expect any externlal oral evidence. He submitted that Ex.15 itself is sufficient to indicate the torture meted out to the deceased. Mr. Desai submitted that the letter produced by the accused in defence, at Ex.28, would indicate that even while she was at her parental house for delivery, there was a quarrel between the deceased and the accused and, therefore, the Trial Court is justified in relying on note-Ex.15 and recording a conviction. Mr. Desai, however, in all fairness, submitted that Ex.16 cannot be looked into by the Court as the expert has not compared the handwritings and has not expressed any opinion therefor. Mr. Desai, however, submitted that, though the evidence of the parents suffers from the vice of improvements, it has to be considered in light of th fact that they are the persons, who would know the condition of the daughter and who would have no reason to falsely implicate the son-in-law, if there was no dispute. Mr. Desai, therefore, urged that the appeal may be dismissed.

6. Having regard to the rival side contentions, it would be appropriate to note that, as rightly argued by Mr. Soni, there are only two depositions which point at the accused for having ill-treated the deceased. They are in form of depositions of Chavli Kameshwar Shastri, at Ex.14, and Bhanumati Kameshwar Shastri, at Ex.34. Chavli Kameshwar Shastri (Ex.14) happened to be father of the deceased-Sreemayee. He lodged the complaint. He states in his deposition that on the 23rd March, 1998, he

received a message from his wife-Bhanumati that Nageshwar Rao, elder brother of the appellant, telephonically informed here that Sreemayee had fallen down from second floor and sustained serious injuries. He, therefore rushed home and decided to go to Kakrapar. He went to the office of Indian Airlines and purchased five tickets.

6.1 He states that, on the 22nd March, 1998, deceased-Sreemayee had telephoned him at about 5.30-6.00 in the evening and told him that her husband is harassing her. He says that she was crying when she was on the telephone. She also told him that her husband tells her to leave the house and go to Hyderabad. The witness says that, he gave solace to his daughter and told that they are trying to reach Kakrapar and said that she should have patience. He says that he told Sreemayee to meet Shri Bhiksham, a Senior Officer, and tell him about her position. He says that his wife had also talked to Sreemayee. He says that his wife was told by the daughter that, their son-in-law had told that, if they reach Kakrapar, he would break their legs. The witness says that on the 23rd March, 1998, he had telephoned Mr. Bhiksham in the early morning hours and told him that his daughter is in difficulty and he should extend some help. He says that he was promised by Mr. Bhiksham to look into the matter. He says that, Mr. Bhiksham had told him that he would call his daughter and son-in-law and explain to them and that he should not worry about that.

6.2 He says that Sreemayee delivered a son on the 12th July, 1997 and he informed his son-in-law about the that on the same day. The son-in-law came to be hospital after seven days, all alone. He says that the son-in-law, after coming to the hospital, instead of inquiring about the well-being of the daughter and his son, called Sreemayee outside and discussed something with her. The witness says that the son-in-law felt that the boy delivered by the deceased was born at an unauspicious time and, therefore, he did not want to see the face of the child. He says that, on account of this, there was a quarrel between his daughter and the son-in-law. The son-in-law stayed at the hospital for three days and all the three days, he quarrelled with his daughter.

6.3 The witness says that the child delivered by his daughter suffered from diarrhoea and was required to be hospitalised. The daughter, therefore, telephoned her husband at Kakrapar, to which her husband reacted that she does not know how to take care of the child. Then she telephoned Mr. Nair, requesting him to grant leave to

her husband, so that he could come down to Hyderabad. The witness says that his daughter told him that what type of man her husband is. Instead of giving solace to her, he is finding fault with her. The witness says that his daughter had developed mental tension because of this.

6.4 The witness says that when they reached Kakrapar and saw the dead body of the daughter, the accused did not utter a word of solace till the obsequial ceremonies were over. None of the relatives of the accused were present. He says that none from Kakrapar has informed him as to how his daughter expired, but he suspects that the death is unnatural. Referring to some past incidents, he says that while the child was being taken to hospital, the accused had tried to throttle his daughter in an auto-rickshaw. He says that his son-in-law was suspicious about the character of the deceased which led to the quarrels. Even if his daughter talked to the milkman, his son-in-law would doubt her and quarrel with her.

6.5 The witness has been cross-examined at length. Suffice it would be to record that the witness has admitted in his cross-examination that the entire version regarding the treatment given by the accused to the deceased was not stated by him in the complaint. What is found from reading of the cross-examination is that the witness has improved his version in a manner to bring the case against the accused within the framework of the requirements of Sections 498-A and 306 of Indian Penal Code, unwittingly though, he has admitted in clear terms that the marriage life of his daughter and son-in-law was smooth. He also admits to have contacted people hailing from the state of Andhra Praadesh and staying in Kakrapar Colony. He also admits that the letters got produced on the record through him do not contain anything to indiciate that the marriage life of Sreemayee and the accused was disturbed. He also admits that the letters do not speak of any physical or mental cruelty to deceased-Sreemayee by the accused.

6.6. The witness has admitted in cross-examination that the deceased was suffering from mental depression and was being treated by Dr. M.V.R. Sharma. He also admits that even the accused was affording her this type of treatment.

7. Witness-Bhanumati Kameshwar Shastri, mother of the deceased, is examined, at Ex.34. She says that, Sreemayee and the accused were married on the 15th

October, 1994. That she delivered a son on the 12th July, 1997. That it was a caesarean delivery. That the son-in-law did not talk properly with the daughter. That there used to be quarrels between the accused and Sreemayee for petty reasons. That she does not know the reasons for the quarrels.

7.1 She says that the deceased had telephoned her on the 22nd March, 1998, at about 6.30 P.M., when she told that Srinivasan (the appellant) abuses and beats her and tells her to go to Hyderabad. She says that Sreemayee was crying on the telephone. She comes out with a theory that the accused used to harass and cause cruelty to the deceased and that somebody had pushed her daughter Sreemayee from the second floor. He says that, if she has committed suicide, she should have sustained injury on face and there was no such injury on face and, therefore, she feels that her daughter has been pushed from the second floor.

7.2 The cross-examination of this witness also indicates that she has made improvements in her deposition in a manner as would suit the requirements of the prosecution case and bring the case of the prosecution within the purview of Sections 498-A and 306 of Indian Penal Code.

8. Barring the above two witnesses, there is no witness examined by the prosecution to connect the accused with the offence or to establish the charges levelled against him. If depositions of these witnesses are seen, they do not have any personal knowledge about the incident nor do they have any knowledge about the reason for the quarrels, but they admit that the quarrels were for petty reasons. It would also be relevant to record that the improvements made in the deposition are glaring and cannot be considered as a natural slip or a tendency to exaggerate an incident or event. The complainant admits that the letters written by the deceased do not indicate any strained relations between the husband and the wife. The evidence of this witness, therefore, cannot be accepted to either strengthen or carry the prosecution case any further. They cannot be relied on to found a conviction. The Trial Court has also recorded this aspect in its judgment and rightly so.

9. It will have to be examined now, whether the Trial Court was justified in recording a conviction on basis of Ex.15 and 16. Ex.15 and 16 are two notes purported to have been written by the deceased, which reflect that she was unhappy with the appellant and that

she was ill-treated by him. These notes are brought by the complainant when he came to Kakrapar after learning about the incident. The notes, if seen, do not carry any date or signature. Note-Ex.15 is written in English and the note-Ex.16 is written in Telegu. Note-Ex.16 was first got translated into English and, thereafter, both the notes are translated into Gujarati.

9.1 Report-Ex.67 given by handwriting expert of the Handwriting and Photographic Bureau, Gujarat State, Ahmedabad, clearly indicates that he has examined Ex.15 and Ex.27 and compared the two. Ex.27 is a letter contained admitted handwriting of the deceased. It is written in Telegu as well as English and it is opined that Ex.27 and Ex.15 are written by the same person. Ex.16 is not compared and no opinion is exprssed. Therefore, it would not be permissible to take into consideration Ex.16 as a piece of evidence against the accused. Ex.15, which is in English, runs as under :-

> "There are innumerable incidents in this manner. Every day is a hell to me. There is no such day that I have not cried and this all neighbours know. They also have stopped talking with me.
>
> Before marriage, I was also working in the same section. He tried in many manners to convince me for marriage. It took 6 months of time. He said that he likes me very much and would accept me in the same manners. After talking that word, I agreed for marriage and that Kameshwari teacher is witness. I do'nt know why he change his attitude and started torturing me.
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> (1) First he told that dowry was not satisfactory.
> (2) Then marriage was not satisfactory.
> (3) Then I have to change totally.
> (4) He called me prostitute; all my mother & sisters are also prostitutes because we are in Bombay.
> (5) He asked me whether I have got aborted before marriage.
> (6) He forged my signature and signs for me.
> (7) Forcibly he has taken my signature on blank cheques and blank papers."

9.2 It is clear that Ex.15 does not bear a date nor

does it bear signature. It is, therefore, not possible to know as to when this could have been written. There is substance in the argument advanced by Mr. Soni that Ex.15 does not seem to be a complete document. The first sentence, if seen, indicates that there are innumerable incidents in this manner. Necessary inference is that, in the earlier part, there could be some incidents narrated by the writer. It would also be relevant to note that, in this note, it is written that all neighbours have come to know about this and they have also stopped talking to her. The prosecution has not examined any neighbour from Kakrapar to show that the deceased was ill-treated by the appellant or that she used to cry every day or that they had stopped talking to her because of this. On the contrary, the deposition of Investigation Officer, P.S.I.-Jambre (Ex.38) indicates that, during the course of investigation, he had recorded the statements of neighbours of the accused and Sreemayee as well as the neighbours of the complainant and none else except the complainant, his wife, son and son-in-law has supported the case of the complainant.

10. It would also be appropriate to record, at this stage, that it has come in evidence that the deceased was suffering from psychological depression while she was at Hyderabad for delivery. She was treated by Dr. M.V.R. Sharma of Manasa Nursing Home Pvt. Ltd., Secundrabad. A certificate was collected by the Investigating Officer from the said doctor, which is at Ex.61, which indicates that, she was suffering from MDP. The certificate also indicates that 15% of the patients can commit suicide. The certificate is dated the 27th July, 1998 and it reflects that the deceased was treated by the doctor on the 13th September, 1997, 5th October, 8th October, 9th October and the 24th October, 1997. The contents of Ex.15 that - "there is no such day that I have not cried and this all neighbours know. They also have stopped talking with me" - not supported by the neighbours would indicate possibility of these observations being imaginary, may be out of depression.

10.1 The quarrels indicated by mother of the deceased-Bhanumati (Ex.34) for petty reasons get explained from letter written by the deceased to the accused, which is at Ex.28, wherein she writes -"When you came last time we have wasted time unnecessarily with quarrels. Now I have been thinking as to why I have behaved like that. Sorry for what had happened." This letter is dated the 9th june, 1997, This only indicates that the quarrels were not because of the accused. Even the deceased felt that she was responsible for the

quarrels and she, on retrospection, found that it was not proper for her to have behaved like that.

11. Deposition of Investigating Officer, P.S.I.-Jambre (Ex.38) indicates that the doctor had opined that the deceased was suffering from manic-depressive psychosis, which is possible because of delivery.

12. The evidence discussed above would indicate following features :-

(1) There is no direct evidence as to how the deceased sustained a fall;

(2) The evidence of the parents of the deceased does not inspire any confidence as it suffers from the defect of gross improvements made to suit the requirements of the prosecution case;

(3) Ex.15, a note purportedly to have been written by the deceased does not indicate date as to when it is written. The possibility of such note having been written by her while she was under depression cannot be ruled out because the same has been brought from Hyderabad by her father when she came to Kakrapar after learning about the incident and, admittedly, the note was lying in the bag of the deceased at Hyderabad;

(4) Letter (Ex.28) indicates that, according to the deceased herself, the quarrels were because of her behaviour, which was found by herself to be not proper;

(5) There is evidence to indicate that the deceased was suffering from psychological depression; and

(6) Last, but not the least, the accused has examined a Photographer, who says that, on the previous day, the accused and his wife had come to his studio with the child and got themselves photographed. They were in a happy mood and were planning to go to a cinema. This would indicate that till that moment, there was no dispute between the spouses.

13. The charge that on the day of the incident there was some quarrel between the accused and his wife regarding preparation of vegetable is not established at all.

14. The above factors do not rule out the incident having occurred in absence of any ill-treatment or any provocation or abatement for suicide at the hands of the accused-appellant. It would not be safe to confirm the conviction only on basis of Ex.15. The appeal, therefore, deserves to be allowed and the same is allowed. The judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Surat, at Vyara, in Sessions Case No.226 of 1998, dated the 19th April, 2000, is hereby set aside. The appellant-accused is acquitted of the charges with which he is charged. The bail bond stands cancelled. Fine, if paid, be refunded to the appellant.

[A.L. DAVE, J.]

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